STATE OF MICHIGAN

IN THE SUPREME COURT

BRONSON METHODIST HOSPITAL, a Michigan non-profit corporation, Plaintiff/Appellee, v. MICHIGAN ASSIGNED CLAIMS FACILITY, Defendant/Appellant. /	Supreme Court No. 151344 Court Of Appeals Case No. 317864 and 317866 Kalamazoo County Circuit Court No. 12-0600-NF

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DEFENDANT-APPELLANT MICHIGAN ASSIGNED CLAIMS PLAN'S REPLY BRIEF IN SUPPORT OF ITS APPLICATION FOR LEAVE TO APPEAL OR, IN THE ALTERNATIVE, FOR PEREMPTORY REVERSAL

ORAL ARGUMENT REQUESTED

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Despite Plaintiff Bronson Methodist Hospital's ("Bronson") statement that this case presents a very narrow issue not worthy of this Court's review, the Court of Appeals' February 19, 2015 Order (the "Court of Appeals' Order") expands the legislatively dictated obligations of the Michigan Assigned Claims Plan ("MACP"), contrary to the relevant statutory provisions, by essentially making the MACP the collection agency for health care providers who fail to obtain information from their patients regarding the existence of applicable auto insurance (or lack thereof). This holding would have far-reaching effects not only for the MACP but also for the driving public who ultimately bear the cost of providing benefits to uninsured claimants in certain auto accidents. Both Bronson and the Court of Appeals' Order erroneously ignore the relevant statutory scheme's plain language as well as the clear and undisputed facts in this case that indicate that the MACP correctly denied the claim at issue because it was obviously ineligible for benefits under the MACP. For the reasons stated in the MACP's Application for Leave and this Reply, the MACP respectfully requests that this Court grant the MACP's Application for Leave and reverse the Court of Appeals' decision.

ARGUMENT

II. BRONSON'S ARGUMENT IN SUPPORT OF THE COURT OF APPEALS' ORDER VIOLATES PRINCIPLES OF STATUTORY INTERPRETATION BY IGNORING THE CLEAR STATUTORY LANGUAGE AT ISSUE AND THE LEGISLATURE'S INTENT.

In its Response to MACP's Application for Leave, Bronson, rather than analyzing the Court of Appeals' decision and effect of the Order, simply repeats many of the same erroneous arguments it made before the Court of Appeals. These arguments ignore the statutory scheme put in place by the Legislature to address the MACP by claiming that it is sufficient for a health care provider to simply file an application for benefits with the MACP to force the MACP to assign that claim. Such arguments ignore the MACP's obligation to make an initial

determination of eligibility of a claim before assigning it to a servicing insurer, if appropriate. Bronson's arguments, like the Court of Appeals' Order, fail to properly apply the relevant statutory language, which results in an erroneous analysis that does not withstand scrutiny.

A. MACP Is Statutorily Required to Determine Eligibility Before Assigning a Claim.

Bronson's argument boils down to a simple premise—that medical providers, when acting as claimants to the MACP, need only submit an application for benefits to the MACP to have that claim assigned, without regard to the eligibility of the claim. (Response, pp 15, 20). This premise flies in the face of the applicable statutory language, the legislative intent behind the MACP, and common sense.

Under this flawed argument, any time the insurance status of an injured person cannot be readily "identified" by a health care provider, that person (or the health care provider) may obtain PIP benefits through the MACP. Even when, as in this case, there is no possible scenario under which the MACP would be responsible for such benefits. According to Bronson, the only "threshold" determination that must be made is whether an "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" exists. (Response, p 11). In such a case (again, according to Bronson), if the claimant also meets one of the four requirements in MCL 500.3172(1), then the claim must be assigned. (*Id.* at 14-16).

In making this argument, Bronson, while superficially acknowledging that MCL 500.3173a exists, essentially ignores the legislative mandate that the MACP make an initial determination of eligibility under MCL 500.3173 and MCL 500.3173a. (Response, p 14). The Legislature set up a very clear statutory scheme that was designed to ensure that individuals harmed in motor vehicle accidents that did not have no-fault insurance could receive financial assistance. As a perquisite to permitting a claim to go forward, the MACP must first make an

initial determination of eligibility. MCL 500.3173 and MCL 500.3173a. Here, under either of the two possible insurance scenarios, Mr. Esquivel is not entitled to benefits under the MACP, which is precisely why the MACP denied the claim as required by MCL 500.3173a. In other words, if the MACP makes an initial determination (as here) that a claimant is not eligible for benefits under the MACP (e.g., because the owner of the vehicle was either uninsured (and therefore ineligible) or insured (in which case the insurer should pay the benefits, not the MACP), then there is no reason to even wade into the applicability of MCL 500.3172(1). It is irrelevant if an applicant can meet the requirements of MCL 500.3172(1) if he or she is otherwise ineligible to obtain benefits from the MACP.

Yet, the Court of Appeals' decision requires the MACP to expend resources to conclusively determine under which scenario Mr. Esquivel should be denied or simply assign the claim and force the servicing insurer to expend unnecessary resources to prove the basis of the lack of eligibility because no insurance is "identified" under MCL 500.3172(1). As explained in the MACP's Application, placing such a burden on the MACP is akin to making a no-fault insurer bear the burden of proof with respect to a claim for no-fault benefits submitted by a claimant. (Application, pp 14-15).[1] This is clearly not the law of Michigan.

Moreover, Bronson appears to contradict its first argument (that the claim should be assigned simply because it meets the requirements of MCL 500.3172(1)) by arguing that because MCL 500.3173a requires the MACP to make an initial determination of the "claimant's eligibility"—and here, Bronson is the claimant, not Mr. Esquivel (according to Bronson)—that the MACP should have ignored the facts involving Mr. Esquivel and instead made an initial

[1] The effect of the Court of Appeals' decision has already manifested itself. The MACP has incurred a 386% increase in fees expended during the first four months of 2015 as compared to the first four months of 2014. Miller Johnson has filed a remarkable 50 claims since the beginning of the year, and its usual clients have filed 114 claims.

determination as to whether *Bronson* was eligible for benefits. (Response, p 20). This argument makes no sense—even beyond contradicting its first argument suggesting that meeting MCL 500.3172(1) is sufficient to require the MACP to assign a claim without regard to MCL 500.3173a. The Court of Appeals evidently did not buy this argument either as it did not address it in the Order.

Bronson, as a health care provider, is not the claimant as Mr. Esquivel would be if he filed the claim himself, but Bronson stands in the shoes of Mr. Esquivel. Nothing in the statute says that if a health care provider is filing a claim on behalf of an injured party that the health care provider is subject to a different, lesser standard. The statute requires what the statute requires. The information required under the statute concerns the injured person, not the health care provider (i.e., the entitlement to benefits is linked to the injured party, not the identity of the claimant). See, e.g., *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231; 293 NW2d 594 (1979) (holding that a survivor's entitlement to PIP benefits does not arise separately and distinctly from the deceased injured person's entitlement to PIP benefits). Second, it makes no sense to say that the MACP should evaluate Bronson and not Mr. Esquivel as the claimant. To do so, the MACP would need to ignore reality and would potentially have to pass along every claim made by a health care provider to a servicing insurer even when it was clear that the injured party was ineligible for benefits. This argument also ignores the statute's requirements as well as the clear legislative purpose behind the MACP, which was not to benefit health care providers that lack the opportunity or motivation to investigate the insurance status of their patients, but to ensure that individuals injured in an uninsured motor vehicle accident in Michigan who have no insurance coverage of their own, receive financial assistance. In fact, to

accept Bronson's argument would be to require the MACP and its servicing insurers to expend resources that either do not exist or are not required to be expended under Michigan law.

While Bronson acknowledges that MCL 500.3173a requires the MACP to make an initial determination, it contends in the same argument that the MACP is not required to investigate claims for assignment and that the MACP can only deny a claim if it is "evident" or "easily seen" that the claim is not eligible for assignment. (Response, p 21). Again, Bronson's superficial analysis ignores the clear unambiguous statutory language and the practical reality of this case and the effect of the Court of Appeals' Order.

The statute does not require the MACP to do anything if it determines that there is no set of facts that would support an eligible claim. The Court of Appeals' Order appears to suggest that the MACP may reject a claim only after deposing Mr. Esquivel. (Order, p 8). Even Bronson appears to believe that this cannot be true under the statute (Response, p 21), and yet that is exactly what the Court of Appeals' Order suggests. Bronson does not address how the Court of Appeals' Order and the statute comport because it cannot do so without revealing the inherent flaws in such analysis.

Despite Bronson's arguments to the contrary, the MACP must make an initial determination of eligibility before it assigns a claim—and it must evaluate the injured party's eligibility, not the health care provider. Here, the MACP made such a determination and properly denied the claim. The Court of Appeals' Order effectively ignores the requirements of the statute and the indisputable facts in this case and should be reversed.

B. The Relevant Statutory Scheme Makes Clear That the Court of Appeals Erred in its Decision.

As discussed at length in the MACP's Application for Leave to Appeal, the Legislature created a statutory scheme that must be construed together. (Application, pp 8-15). Bronson, as

it did before the Court of Appeals, fails to address the entire statutory scheme. The MACP's (and the Circuit Court's) interpretation of the relevant statutory provisions do not require this Court to read anything additional into the statute. Rather, it requires this Court to interpret the plain language of the statutes by construing them in context — as required by the principles of statutory interpretation.

The Court of Appeals' (and Bronson's) interpretation of the relevant provisions relies heavily on MCL 500.3172(1) while nearly ignoring MCL 500.3173 and 500.3173a. Bronson suggests that under the MACP's interpretation of the statutes, the Court must read into MCL 500.3172(1) that "no applicable insurance can be identified *only where the individual injured did not own the vehicle involved in the accident.*" (Response, p 20). This is not true. First, this argument again ignores the larger statutory scheme in place. If the MACP makes an initial determination (as here) that a claimant is not eligible for benefits under the MACP (e.g., because the owner of the vehicle was either uninsured (and therefore ineligible) or insured (in which case the insurer should pay the benefits, not the MACP), then there is no reason to even wade into the applicability of MCL 500.3172(1). Bronson's argument requires this Court to ignore MCL 500.3173 and MCL 500.3173a and focus solely on the language in MCL 500.3172(1). Doing so, however, does not provide a complete picture of the interplay between the relevant statutes and results in an erroneous decision.[2]

In addition, Bronson attempts to use the distinction in MCL 500.3172(1) between insurance that is "applicable" and insurance that cannot be "identified" as a red herring.

[2] Indeed, under Bronson's logic, the MACP would be required to assign a claim to a servicing insurer if the claim is submitted by a health care provider even if that provider simply refused to investigate the insurance status of an injured person (and therefore could not "identify" applicable insurance). Such a result would run completely contrary to the legislative intent and statutory requirements of the relevant statutes.

(Response, p 17). A person entitled to benefits under the MACP (assuming not otherwise ineligible under the No-Fault Act) must meet one of four possible criteria—one of which is when "no personal protection insurance applicable to the injury can be identified." MCL 500.3172(1). This language was clearly intended to apply in circumstances like a "hit and run" accident where the identity of the vehicle (and any applicable insurer) is unknown and cannot be identified. Such circumstances make clear why the Legislature provided that benefits may be given when (1) no insurance is applicable to an injury and (2) no insurance applicable to the injury can be identified. MCL 500.3172(1). An injury may fall under the former category if, for example, a person is injured in their own uninsured vehicle and no other vehicles were involved in the accident[3] or a pedestrian not otherwise covered by a no fault policy is hit by an uninsured motorist (there is no insurance to apply to the injury). An injury may fall under the latter category if, for example, a pedestrian not otherwise covered by a no fault policy is hit in a "hit-and-run" where the vehicle is not identified (there is no way to identify the applicable insurance). The Legislature's use of the "identified" criteria does not mean that a health care provider can simply shirk its investigatory responsibilities onto the MACP, particularly in case like this where there is no scenario under which the MACP would be responsible for benefits.

Furthermore, the two cases relied upon by Bronson—*Spencer v Citizens Ins Co*, 239 Mich App 291; 608 NW2d 113 (2000) and *Spectrum Health v Grahl*, 270 Mich App 248; 715 NW2d 357 (2006)—do not provide the clear support that Bronson suggests. Neither case dealt with circumstances such as these. The facts of *Spencer* highlight the different circumstances of this case. *Spencer* involved a victim of a hit-and-run accident where the injured party was not

[3] See *Belcher*, *supra*, 409 Mich at 253-54 (acknowledging that in such circumstances there would be no insurance applicable to the injury and then holding that because the vehicle at issue was uninsured that it was ineligible for benefits from the MACP).

otherwise covered by a no fault policy. 239 Mich App at 294-95. When the injured person could not identify the owner or the driver of the vehicle, he filed an application for benefits with the ACF. *Id.* *Spencer* was essentially a priority dispute case, which presents facts very different from this case, but it nicely highlights a case involving a claim that was not obviously ineligible for benefits.[4] *Spectrum* also does not dictate the result sought by Bronson. Although the injured party in *Spectrum* was apparently unable to "identify" applicable insurance, the facts of the case differed significantly from those in this case[5] and the Court also did not analyze the interplay between MCL 500.3172, 500.3173, and 500.3173a. Neither *Spencer* nor *Spectrum* "require" the MACP to assign the claim in this case.

Given the statutory language and clear facts in this case, summary disposition was appropriate. The Court of Appeals erred in its reversal of the Circuit Court's order, and the MACP respectfully requests that this Court grant leave and reverse the Court of Appeals' Order.

III. THE CIRCUIT COURT'S FINDING THAT BRONSON'S CLAIM WAS FRIVOLOUS WAS NOT CLEARLY ERRONEOUS.

As explained at length above and in the MACP's Application for Leave to Appeal, Plaintiff's suit against the MACP is without legal merit. Filing this suit was an effort to force the MACP to conduct an investigation in the hope that insurance coverage would be discovered through the MACP's resources. The MACP, however, does not have any special resources to locate such coverage. The process is literally paying a third party investigator to pick up the telephone and call insurance companies to ask if coverage exists. Plaintiff and Plaintiff's

[4] Moreover, the meaning of MCL 500.3172 and its interplay with MCL 500.3173 and MCL 500.3173a was not examined in *Spencer*. Another distinction here is that the claimant is not the injured party himself, but the health care provider.

[5] Unlike here, the injured party in *Spectrum* was not the owner of the vehicle (who did not carry the requisite insurance for the vehicle) and was unaware that she was covered by a no-fault policy purchased by her estranged husband. *Spectrum*, 270 Mich App at 250.

counsel are perfectly capable of taking such action—and, in fact, the MACP suggested that they do so. (Exhibit J to the Application). There was never any possibility of obtaining benefits through the MACP in this case. Moreover, none of the case law relied upon by Bronson actually supports their arguments in this case. Accordingly, the suit against the MACP was without merit and the award of sanctions and attorney fees were appropriate.

CONCLUSION AND REQUEST FOR RELIEF

Despite the Court of Appeals' erroneous adoption of Plaintiff's interpretation of MCL 500.3172(1), the statutory language at issue is very clear. After an application for benefits is submitted to the MACP, the MACP must deny any obviously ineligible claim and has no obligation to refer such an ineligible claim to its servicing carriers to make this same determination. MCL 500.3173a. The statute does not somehow lower the standard because a health care provider files the claim. Mr. Esquivel's claim was clearly ineligible for benefits under the MACP and the MACP properly denied it. The Court of Appeals' Order is contrary to the relevant statutory language and the Legislature's intent and cannot stand.

WHEREFORE, Defendant-Appellant Michigan Assigned Claims Plan respectfully requests that this Honorable Court grant its Application for Leave to Appeal and reverse the Court of Appeals' erroneous decision. In the alternative, MACP requests that this Court peremptorily reverse the decision and instruct the trial court to enter judgment in the MACP's favor.

Respectfully submitted,

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